

To: Chair Spearman, Chair of the Sunset Subcommittee of the Legislative Commission

From: Elliot Malin, MPA

Date: January 21, 2021

Subject: Requested Report on Updated Status of SB 98 (2019) Implementation from Nevada Board of Homeopathic Medical Examiners

Chair Spearman and Members of the Sunset Subcommittee of the Legislative Commission, this updated report is compiled on behalf of the Nevada Board of Homeopathic Medical Examiners (Board) in order to inform the Committee as to the updated status of the implementation of SB 98 (2019) and the improvement in the functioning of the Board, as required by SB 98. SB 98 ended the terms of current Board with the goal of having the Governor appoint a new Board in order to get them current and compliant with Nevada Revised Statutes (NRS).

As given in the June 2020 memo, dated June 26, 2020, which is attached to this updated memo as well, SB 98 stemmed from financial issues the Board had run into due to the various lawsuits that put the Board in debt with the Office of the Attorney General (OAG). Under advice given by the OAG, the Board has been advised to let the new Board pay the old debt once the Board is reconstituted; but, has remained current with any new charges to the Board by the OAG.

The Board has continued to hold public meetings – their last meeting being December 2020 – as well as testing and approving new licensees to join the workforce in Nevada during the ongoing COVID-19 pandemic.

In the letter dated October 22, 2020 from Chair Spearman stating:

“Further, the Subcommittee recommended that a bill draft be requested in case the report does not indicate that the provisions of SB 98, including the appointment of new board members to replace all members serving at the time the legislation was enacted, have been completed. Such a bill draft request would terminate the Board and transfer the responsibility for regulating the practice of homeopathic medicine to the State Board of Health as proposed in SB 98, as introduced.”

Due to SB 98 having required the Board to be reconstituted as well as noted in the letter dating October 22, 2020, and the sole authority resting with Governor Sisolak, and since the Board has not been reconstituted at this time the Board has continued to operate in a caretaker position until that new Board has been appointed by the Governor, as NRS 630A.120 allows them to do stating:

“1. Upon expiration of his or her term of office, a member shall continue to serve until a person qualified under this chapter is appointed as a successor.”

Because of this, an action the Board has taken to help the Governor have acceptable and qualified candidates to appoint to reconstitute the Board, the Board has sent out notices to all licensees in the State of Nevada of the open seats encouraging them to apply, as well as giving them the application and link from the Governor’s Office to do so. We have learned that there are roughly 6 applicants that have applied to the open positions since the positions came open in 2019.

With that, applications for Boards and Commissions are only valid for a year from the time that they were submitted. With them not having been appointed by the Governor the applications are no longer valid and must be resubmitted. Further, from what we have been informed of, the Governor’s Office had waited to give deference to the current Board to reapply but was unaware that the intent was to completely replace the Board with a new one. Due to this misunderstanding the applications that were in had lapsed and were never appointed. As stated above, the Board has sent out notices to all licensees and is actively working to recruit individuals to submit applications with the Governor’s Office for appointment to the Board – and the miscommunication has been cleared up in order to allow for the new appointments to be made and to take effect immediately to successfully complete the requirements set forth in SB 98 and signed by the Governor on June 12, 2019. The Board is aware of applicants having submitted and resubmitted their applications to the Governor’s Office for appointments to the Board and are awaiting background checks and appointment.

However, the Board is also still aware of the ongoing COVID-19 pandemic and understands the pressure on the Governor’s Office to address that as well as the other constraints placed on the various levels of the state government, and so the new Board has not yet been appointed at this time. While the Board has been patient in waiting for the reconstitution of the Board, the authority clearly rests with the Governor to make any of the appointments to the Board to officially complete all requirements of SB 98.

The Board in its custodial capacity is working to continue to right the wrongs of the past to get the incoming Board, when that Board is appointed, the ability to start on day one in a positive step in the right direction.

To: Chair Spearman and Sunset Subcommittee of the Legislative Commission

From: Elliot Malin, MPA

Date: June 26, 2020

Subject: Report on Status of SB 98 (2019) Implementation from Nevada Board of Homeopathic Medical Examiners

Chair Spearman and Members of the Sunset Subcommittee of the Legislative Commission, this report is compiled on behalf of the Nevada Board of Homeopathic Medical Examiners (Board) in order to inform the Sunset Subcommittee as to the status of improving the functioning of the Board, as required by SB 98 (2019). SB 98 disbanded the then current board with the goal of having the Governor appoint a new board in order to get them current and compliant with NRS.

SB 98 stemmed from financial issues the Board had run into due to various lawsuits that put them in debt with the Office of the Attorney General (OAG). That debt was totaled at \$143,055.93. An agreement had been reached with the now former Chief Financial Officer (CFO) of the OAG to pay off that debt. The Board had paid an initial \$30,000.00 to the OAG and two subsequent installments of \$1,500.00. The last installment was paid on June 28, 2019.

There was one new charge from the OAG of \$1,574.50 from October of 2019. This was brought to the attention of the outgoing Board President on Friday (June 26, 2020). As of the morning of this meeting (June 30, 2020) a check has been sent to the OAG via certified mail for that amount. This leaves a total debt left to be paid to the OAG of \$110,055.93 (after the October 2019 debt being paid). Due to the mandate of the Board having expired, they believe that the new Board be responsible for re-ratifying that agreement to continue paying.

Further, SB 98 requires the Board to report to the Sunset Subcommittee the status of the performance of its duty in compliance with the applicable statutes to the Sunset Subcommittee. With the terms of the Board members having expired as of June 30, 2019 as is stipulated in SB 98, and with NRS 630A.120 stating:

“1. Upon expiration of his or her term of office, a member shall continue to serve until a person qualified under this chapter is appointed as a successor.”

No successor(s) to the Board having been appointed since their term(s) expired on June 30, 2019. Thus, creating two pieces of conflicting statute in the NRS. With this in mind the Board that had been set to disband as of June 30, 2019 has stayed on in a minimal custodial capacity. In this, the Board has operated in renewing and accepting new applications for licensure, as well as administering the exams for the licensure – but is not performing any other responsibility in their capacity as the Board.

Another issue facing the replacement of the Board is the emergence of COVID-19. Due to the constraints put on the various levels of the state government the new Board has not been appointed at this time. Dr. Fong had reached out to the Governor's Office late June of 2019 in order to obtain the status of the Board and receive clarification on when their replacements would be nominated and appointed by Governor Sisolak in order for the Board's functions to continue. As stated, as of yet no movement has been made in their replacements and no communication given.

Before the passage of SB 98 and the 2019 Session, the Board was not financially solvent and struggling with the financial debt to the OAG. The Board at that time discussed a path to increase fees in order to raise funds to pay back that debt. Today, the Board has financial stability alongside the agreement to pay back the OAG – which they believe must be re-ratified by the next Board.

The Board has held one public meeting since the passage of SB 98 on January 30, 2020. That one meeting was to address a settlement on advice of the OAG with pending litigation. The last meeting before this one was held on March 27, 2019; in that meeting the agreement between the Board and the OAG CFO was discussed and approved.

Currently the Board has around 70 licensees in the State of Nevada and works to serve them and keep the public safe and healthy moving forward. Over the past year in the custodial capacity the Board has worked to right the wrongs of the past actions.